

REMARKS

By this Amendment, claims 1, 8, 14, 15, 16, 22, 23, 24 and 25 have been amended to more clearly define the claimed subject matter and to improve the syntax, grammar, and idiom of the language recited therein. Claims 29 through 33 have been added. No new matter has been added. Accordingly, claims 1-3, 5-9, 11-12 and 14-33 are currently pending in the application, of which claims 1, 8 and 14 are independent claims. In view of the amendments and following remarks, Applicant respectfully requests reconsideration and timely withdrawal of the pending rejections for at least the reasons discussed below.

Rejection of Claims 1-3, 5-9, 11-12 and 14-28 Should be Reconsidered and Withdrawn

In the Final Office Action date February 28, 2012 (“Office Action”):

(a) Claims 1-3, 6, 8-9, 14, and 19-22 have been rejected under 35 U.S.C. § 103(a) for being unpatentable over U.S. Patent No. 6,901,381 issued to Brown, et al. (“Brown”) in view of U.S. Publication No. 2002/0010633 issued to Brotherston (“Brotherston”) and U.S. Publication No. 2004/0002902 issued to Muehlhaeuser (“Muehlhaeuser”) and U.S. Publication No. 2003/0134645 issued to Stern et al. (“Stern”).

(b) Claims 5, 7, 11-12, and 15-18 have been rejected under 35 U.S.C. § 103(a) for being unpatentable over Brown, in view of Brotherston and Muehlhaeuser and Stern as applied to the respective independent claims, and further in view of U.S. Publication No. 2002/0161826 issued to Arteaga et al. (“Arteaga”).

(c) Claims 23-28 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Brown in view of Brotherston and Muehlhaeuser and Stern as applied to the respective independent claims, and further in view of Examiner’s Official Notice.

Applicant respectfully traverses each and every one of these rejections. Based on the following remarks, Applicant respectfully submits that the claims are allowable over the references relied upon in the Office Action.

A. Claims 1-3, 6, 8-9, 14, and 19-22 are Patentable

Independent claims 1, 8 and 14, and dependent claims 2, 3, 6, 9 and 19-22 were rejected by the Examiner as being unpatentable over Brown in view of Brotherston, Muchlhaeuser, and Stern.

Neither Brown, Brotherston, Muchlhaeuser, nor Stern, whether taken individually or in any proper combination, discloses or renders obvious a personal digital assistant (PDA) where said PDA is used “for collecting sales transactions information relating to sales of one or more of the inventory items to a plurality of consumers, wherein the PDA is configured and utilized by one or more users to provide a change due flag to record identifying information of at least one of a plurality of consumers to capture the amount of change due to said at least one of a plurality of consumers identified by a specific location;” as described in claim 1. Nor does Brown, Brotherston, Muchlhaeuser, nor Stern, whether taken individually or in any proper combination, discloses or renders obvious a handheld computing device “configured to be utilized by one or more users for completing sales transactions and tracking onboard inventory items, wherein the handheld computing device is configured by at least one or more users to provide a change due flag to record identifying information of at least one of a plurality of consumers to capture the amount of change due to said at least one of a plurality of consumers identified by a specific location” as described in claim 8. Nor does Brown, Brotherston, Muchlhaeuser, nor Stern, whether taken individually or in any proper combination, discloses or renders obvious a method comprising “identifying a specific user with the PDA; collecting transaction information of at

least one of a plurality of consumers at least one point of sale; checking a change due flag on the PDA at the point of sale and entering the amount of change due to at least one of a plurality of consumers, including consumer identifying information; ... wherein the specific user of the PDA and the at least one of the plurality of consumers are different” as described in claim 14.

The Office Action concedes that any combination of three or fewer references selected from Brown, Brotherston, Muchlhaeuser and Stern, does not teach or render obvious all of the subject matter recited in claim 1. Brotherston fails to disclose wherein the portable terminal is a PDA, wherein the user of the PDA enters transaction information on behalf of a plurality of consumers, and wherein the PDA is configured to provide a change due flag for a plurality of consumers. The Office Action relies on Stern to teach “wherein a device is configured to provide notification (e.g., flag) identifying information to capture the amount of compensation due to a consumer (see at least [0057]).” (See Office Action, at p.7) Applicant respectfully disagrees that Stern teaches this aspect.

Applicant respectfully submits that Stern, whether taken alone or in any proper combination, does not disclose or render obvious the aspect of wherein sales transaction information is entered into the PDA by one or more users on behalf of at least one of a plurality of consumers, nor that the PDA is configured by the user to provide a change due flag to record information of at least one of the plurality of consumers identified by a specific location.

Stern specifically identifies the data with the device or user of the device, i.e., compensation of the person carrying or otherwise associated with the device. The compensation disclosure is about the person carrying or using the device, and not of at least one of the plurality of consumers, who are different than the user of the device. The only identifying information recorded in Stern might be identifying information pertaining to the user of the device, not the

identifying information of one of the plurality of consumers. Stern's disclosure fails to disclose the recordation of another party's identifying information, one that is at least one of the plurality of the consumers and not a user of the device.

Moreover, the references of record, whether taken alone or in combination fail to disclose wherein the PDA or devise is configured and utilized by the user to provide a change due flag to record identifying information of at least one of a plurality of consumers to capture the amount of change due to at least one of a plurality of consumers identified by a specific location.

Independent claim 14 is distinguishable over Brown in view of Brotherston, Meuhlhaeuser and Stern for similar reasons. None of Brown, Brotherston, Muehlhaeuser nor Stern, whether taken individually or in any proper combination, discloses or renders obvious a method "identifying a specific user with the PDA; collecting transaction information of at least one of a plurality of consumers at least one point of sale; checking a change due flag on the PDA at the point of sale and entering the amount of change due to at least one of a plurality of consumers, including consumer identifying information;wherein the specific user of the PDA and the at least one of the plurality of consumers are different."

The Office Action also asserts that it would have been obvious for one of ordinary skill in the art to modify the teachings of Brown, in view of Brotherston, Muehlhaeuser, and Stern because the resulting combination would provide accurate/quick determination of the amount due and provide a notification regarding the compensation.

The Applicant respectfully disagrees that one of ordinary skill in the art would combine the teachings of Brown, Brotherston, Muehlhaeuser and Stern as proposed by the Office Action. Applicant submits that the Office Action has inappropriately and impermissibly used the application specification as a map to pick and choose excerpts of Brown, Brotherston,

Muehlhaeuser and Stern to reject the pending claims. Absent the present patent application, one of ordinary skill in the art would have had no reason to look to Brown, Brotherston, Muehlhaeuser and Stern to arrive at the subject matter presently claimed in claims 1, 8 and 14.

Even if one were to combine Brown, Brotherston, Muehlhaeuser and Stern as suggested by the Office Action, as discussed above, which Applicant contends would not have been obvious to do, any resulting system from the combination of teachings still does not teach to a PDA configured and utilized by a user on behalf of the consumer to provide a change due flag to record consumer identifying information of at least one of the plurality of consumers to capture the amount of change due to at least one consumer at the point of sale, wherein the user and the consumers are different, as required by each of the independent claims 1, 8 and 14.

With respect to dependent claims 2, 3, 6 and 19-22, Applicant asserts that these claims are allowable on their own merit and at least because they depend on independent claim 1, 8 or 14, which Applicant submits has been shown to be allowable.

A rejection under 35 U.S.C. §103 based on obviousness cannot be properly maintained without a proper disclosure of each and every element and the motivation to combine the elements. Here, the applied references fail to disclose or render obvious a PDA identified with a specific user, where transaction information is collected by the user for at least one of the plurality of consumers, wherein the specific user of the PDA and at least one of the plurality of consumers are different individuals. Accordingly, Applicant respectfully requests the withdrawal of the rejection under 35 U.S.C. §103.

B. Claims 5, 7, 11-12, and 15-18 are Patentable

Dependent claims 5, 7, 11-12 and 15-18 were rejected in the Office Action as being unpatentable over Brown in view of Brotherston, Muehlhaeuser and Stern as applied to the

respective claims above, and in further view of Arteaga. Applicant asserts that these claims are allowable on their own merit and at least because they depend on independent claims 1, 8 or 14, which Applicant submits has been shown to be allowable.

Applicant expressly includes the arguments noted above with respect to Brown, Brotherston, Muehlhauser and Stern and that the combination does not disclose, nor render obvious the features of the present invention, including wherein a specific user is identified with a PDA, transaction information is collected by the user for at least one of the plurality of consumers, wherein the user and the consumers are different individuals, wherein a change due flag is unchecked when the amount of change due has been provided to at least one of the plurality of consumers, nor wherein the change due flag is associated with a seat number.

Applicant further notes that one of ordinary skill in the art, absent impermissible hindsight, would have had no reason to attempt to combine Stern's data perimeter tracking device with Brown, Brotherston, or Muehlhauser's transactional sales devices. Unlike the Applicant's disclosure, Stern's recordation of identifying information appears to be applicable only to the user of the device, and is not used by the user to record a third party's identifying information who is not the user of the device. Arteaga's mobile handheld device also appears not to disclose wherein the device is configured to provide a change due flag to record consumer identifying information of another party who is not the user of the device. Arteaga fails to cure the deficiencies of Brown, Brotherston, Muehlhauser and Stern or the combination of thereof.

C. Claims 23-28 are Patentable

Dependent claims 23-28 were rejected in the Office Action as being unpatentable over Brown in view of Brotherston, Muehlhauser and Stern as applied to the respective claims above, and in further view of the Examiner's Official Notice. Applicant asserts that these

claims are allowable on their own merit and at least because they depend on independent claims 1, 8 or 14, which Applicant submits has been shown to be allowable.

Additionally, Applicant respectfully traverses the Examiner's official notice that it is old and well known in the commerce arts to uncheck a change due flag for a given monetary transaction and further to associate a change due flag to a given identifier. (*See* Office Action, at p. 12)

Applicant respectfully requests that the Examiner produce authority that shows the relevant features were commonly known, or withdraw all of the official notices, pursuant to the rules and procedures of the U.S. Patent & Trademark Office. In particular, Applicant requests that the Examiner provide objective evidence that it was commonly known to: (i) uncheck a change due flag for a given monetary transaction, and (ii) associate a change due flag to a given identifier. Applicant submits that the foregoing features are not commonly known, and even if these features were commonly known, it would not have been obvious to one of ordinary skill in the art to combine these features with Brotherston, Muehlhaeuser and Stern.

In view of the fact that none of the art of record, whether considered alone or in any proper combination, discloses or renders obvious the present invention as defined by the pending claims, and in further view of the above remarks, these rejections have been rendered moot. Reconsideration of the Examiner's action and allowance of the present application are respectfully requested and are believed to be appropriate.

CONCLUSION

Applicant believes that a full and complete response has been made to the Office Action and respectfully submits that all of the stated grounds for rejection have been overcome or rendered moot. Accordingly, Applicant respectfully submits that all pending claims are allowable and that the application is in condition for allowance.

Should the Examiner feel that there are any issues outstanding after consideration of this response the Examiner is invited to contact the Applicants' undersigned representative at the number below to expedite prosecution.

Prompt and favorable consideration of this Reply is respectfully requested.

Respectfully submitted,

/ Charles J. Gross /

Charles J. Gross
Reg. No. 52,972

Date: **August 28, 2012**

McGuireWoods LLP
1750 Tysons Boulevard
Suite 1800
McLean, VA 22102-4215
Tel: 202-857-1726
Fax: 703-712-5240

SM/LJT/cyr

\40464324.2